Filing # 252496948 E-Filed 07/15/2026 10:42:14 AM

IN THE COUNTY COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO.: 2026-MM-403782-A-O

STATE OF FLORIDA,

Plaintiff,

vs.

MARCEL BARTHEL,

Defendant.

_____/

MOTION TO DISMISS BASED ON STATUTORY IMMUNITY UNDER FLORIDA'S STAND YOUR GROUND LAW

COMES NOW, the Defendant, MARCEL BARTHEL ("Defendant"), by and through his undersigned attorney, pursuant to Fla. R. Crim. P. 3.160(b), Fla. Stat. Sec. 776.032, 776.012, and 776.031, and respectfully file this, his Motion to Dismiss Based on Statutory Immunity Under Florida's Stand Your Ground Law, and as grounds therefore would state:

1. Marcel Barthel is charged by Information dated May 26, 2026, with the misdemeanor battery of Mr. Richard Reap contrary to Fla. Stat. 784.03(1)(a).

2. Mr. Barthel is immune from criminal prosecution and any force used by him on May 26, 2026 was justifiable as provided by Fla. Stat. Sec. 776.032, and 776.012.

3. Fla. R. Crim. P. 3.190(b) states: "All defenses available to a defendant by plea, other than not guilty, shall be made only by a motion to dismiss the indictment or information, whether the same shall relate to matters of form, substance, former acquittal, former jeopardy, or any other defense."

4. Fla. Stat. Sec. 776.032 states in part:

a. (1) "A person who uses or threatens to use force permitted in Sec. 776.012, 776.013, or 776.031 is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force …"

5. Fla. Stat. Sec. 776.012 states in part:

a. (1) "A person is justified in using or threatening to use force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force."

6. The facts supporting this motion are as follows:

a. At approximately 6:30 p.m., on April 23, 2026, Mr. Barthel and his girlfriend were in the community elevator of his apartment complex located at 415 East Pine Street Orlando, Florida. Mr. Richard Reap was in the elevator as well.

b. The elevator stopped at the 12th floor where Mr. Reap exited, and as he exited Mr. Reap made loud comments to Mr. Barthel and his girlfriend to the effect of, "Have some fucking respect." Apparently, Mr. Reap was offended by Mr. Barthel and his girlfriend hugging while in the elevator.

c. Mr. Barthel leaned out of the elevator to ask Mr. Reap what he said as he was confused by the statement. Mr. Reap then made a statement to the effect of, "Have some respect before I call ICE on that bitch" Mr. Barthel's girlfriend is of Mexican descent.

d. Mr. Barthel exited the elevator and confronted Mr. Reap verbally telling him his statements were offensive and inappropriate. Mr. Barthel did not threaten or touch Mr. Reap at that point. Mr. Reap then came toward Mr. Barthel aggressively raising his hands and getting very close to him. Mr. Barthel, in fear that Mr. Reap was going to batter him, pushed Mr. Reap away.

e. Mr. Barthel walked back into the elevator, where his girlfriend was standing. Mr. Reap then approached the elevator in a threatening manner. Mr. Barthel stepped out of the elevator and told Mr. Reap to leave them alone. Mr. Reap walked away briefly and came back toward the elevator again in a threatening manner. Mr. Barthel was concerned that Mr. Reap would physically attack him or his girlfriend, so he pushed him away, and returned to the elevator.

f. Mr. Reap then threw a soft drink bottle at Mr. Barthel. Mr. Barthel did not retaliate. Rather, he remained in the elevator, pushed the button for his floor and left the area.

g. In this altercation, Mr. Barthel pushed Mr. Reap only after Mr. Reap had approached Mr. Barthel aggressively and threatened him. Mr. Barthel pushed Mr. Reap to stop his continuing approach and attack. Mr. Barthel then entered the elevator where his girlfriend remained and left the area.

h. Mr. Barthel was justified in using non-deadly force because he reasonably believed that using or threatening to use such force was necessary to prevent the imminent use of unlawful force against him or his girlfriend.

i. Mr. Barthel was in the common area of his apartment complex where he lives and therefore, was lawfully allowed to be on the property at the time he acted

in self-defense. Mr. Barthel used non-deadly force, did not have a duty to retreat and had the right to stand his ground because he was not engaged in criminal activity and was in a place where he had the right to be.

7. Mr. Barthel has raised a claim for immunity from criminal prosecution. "The trial court is then to determine whether, at first glance and assuming all of the facts are true, the alleged facts set forth in the motion support the elements of self-defense in either sections 776.012, 776.103, or 776.031, Florida Statutes." *Jefferson v. State*, 264 So.3d 1019 at 1029 (Fla. 2nd DCA, 2018).

8. The facts contained in this motion raise a prima facie case of self-defense and therefore, the burden shifts to the State.

9. The burden shifts to the State at a hearing on this motion to prove that Mr. Barthel did not act in self-defense by the standard of clear and convincing evidence. "If the trial court determines that the Defendant's claim of self-defense satisfies the requirements set forth in the applicable self-defense statute raised by the accused, the State shall then present clear and convincing evidence to overcome the self-defense claim." *Id.*

10. The Court shall employ the objective standard of review of the facts presented when ruling on this motion. "The conduct of a person acting in self-defense is measured by an objective standard, but the standard must be applied to the facts and circumstances as they appeared at the time of the altercation to the one acting in self-defense." *Mobley v. State*, 132 So.3d 1160 (Fla. 3rd DCA, 2014).

11. Pursuant to Fla. Stat. Sec. 776.012, 776.031, and 776.032, Mr. Barthel was justified in his conduct and is immune from criminal prosecution.

WHEREFORE, the Defendant prays this Honorable Court to grant relief consistent with this motion and that the Defendant be granted immunity from further criminal prosecution, and other and further relief as this Honorable Court deems just.

July 15, 2026
Date

MARCEL BARTHEL
Defendant

Sworn to (or affirmed) and subscribed before me by ✓ physical appearance or _____ online notarization this 15TH day of JULY 2026, by MARCEL BARTHEL.

NOTARY PUBLIC - State of Florida

FRAN ZELLNER
Notary Public
State of Florida
Comm# HH479763
Expires 2/10/2028

Printed, typed or stamped commissioned name of Notary Public

_____Personally known or ✓ Produced Identification
Type of identification produced FL DL # B242097428000

AI RELATED DISCLOSURE AND CERTIFICATION

I HEREBY CERTIFY that the legal authorities identified in this filing exist and are accurately cited.

Respectfully submitted,

/s/THOMAS D. SOMMERVILLE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15TH day of July 2026, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Filing Portal, which will serve a Notice of

Electronic Filing to Shaylynn Kotch, ASA, Office of the State Attorney, 415 North Orange Avenue Orlando, FL 32801, skotch@sao9.org

/s/ THOMAS D. SOMMERVILLE
THOMAS D. SOMMERVILLE, of
LAW OFFICE OF
THOMAS D. SOMMERVILLE, P.A.
820 North Thornton Avenue
Orlando, Florida 32803
Telephone: (407) 426-1204
Facsimile: (407) 426-1704
Email: tom@sommervillelaw.com
Florida Bar Number 0141682
Attorney for the Defendant.